

Remarks

In the final office action mailed on September 15, 2003, Examiner rejected pending claims 7-24 under 35 U.S.C. 103(a). Specifically, Examiner rejected claims 7, 9, 14-15, 16, 18, and 23-24 under 35 U.S.C. 103(a) as being unpatentable over Cupps, and further in view of Miller. Claims 8 and 17 were rejected under 35 U.S.C. 103(a) as “being obvious over Cupps/Miller as applied to claims 7 and 16 above, in view of Official Notice.” Claims 10-13 and 19-22 were rejected under 35 U.S.C. 103(a) as being obvious over Cupps/Miller as applied to claims 7 and 16, and further in view of Suzuki (U.S. Patent No. 6,129,274). Examiner deemed arguments presented by Applicant in the previous Amendment as being unpersuasive because they did not rebut Examiner’s combination of the cited references but rather criticized the references individually.

Claims 7 and 16

Examiner acknowledges that the Cupps reference fails to disclose the generation of labels in claims 7 and 16 and that the Cupps reference also fails to disclose an automated check-out station that receives an assigned order number and verifies that the received assigned order number corresponds to the assigned order number on the generated label as set forth in claims 7 and 16. Examiner then relies upon Miller to supply the missing claim elements and argues that the combination of Cupps in view of Miller renders the invention of claims 7 and 16 unpatentable.

Examiner's comments regarding Applicant's failure to address the combination of Cupps and Miller are inappropriate for at least two reasons. For one, Examiner had previously relied upon the combination of Walker and Miller and Applicant did present reasons why this combination failed to render obvious the invention of claims 7 and 16. Examiner agrees with this argument because the combination of Walker and Miller is not cited as a basis for rejecting claims 7 and 16. In the previous Amendment, Applicant criticized Miller as failing to verify a received assigned order number as corresponding to an assigned order number on a generated label because Miller provides a system and method directed to "keeping a customer at home." That is, Miller does not supply the claim element that Examiner has acknowledged is missing. When neither reference of a cited combination of references fails to teach or suggest a claim element, the combination fails to render a claim obvious.

To overcome this deficiency, Examiner attempts to convert the bar code reader of Miller into the automated checkout station required by claim 7 and verification of the stored assigned order number as set forth in claim 16. This effort fails for at least the following reasons. For one, the bar code reader of Miller is not used to verify an assigned order number. Instead, the bar code on a label is read so the contents of the order may be displayed and the delivery person may determine if beverages are required for the order (Miller, Col. 6, line 66 to Col. 7, line 5). Thus, the bar code reader of Miller is not used to verify that a received assigned order number corresponds to an assigned order number on a generated label. Such verification is impossible with the bar code reader of

Miller because only one assigned order number, the one on the generated label, is read. No assigned order number is received over a public-access network and stored for verification against a generated label identifying an assigned order number in either Cupps or Miller. Consequently, the combination of Cupps and Miller does not teach or suggest each and every limitation of claim 7. Examiner's assertion that the combination provides this limitation fails because Examiner has used Applicant's specification in hindsight to modify Miller so its bar code reader meets the requirements of claims 7 and 16. However, modifying a reference with the teachings of a specification is impermissible and the cited combination must fail.

The Miller reference also fails to provide the missing claim element because claim 7 has been amended to more particularly set forth identification of the received assigned order number as being the one retrieved from the storage unit associated with the computer that received the assigned order number over the public-access network. Likewise, claim 16 has been amended to more particularly identify the verification as involving a stored assigned order number received over a public-access network. Miller nowhere teaches or suggests that an assigned order number may be retrieved from a storage unit associated with a computer that issued the order message and received the assigned order number from the cafeteria web site over a public-access network. The bar code reader of Miller is not structured to receive an assigned order number retrieved from a storage unit associated with a computer that issued the order message and received the assigned order number over a public-access network. The

combination of Cupps and Miller does not teach or suggest an assigned order number being received at a customer's computer, such as the one shown in Cupps, and then retrieving the assigned order number from storage coupled to the computer for verification at a automated checkout station. Only if Applicant's specification is used to further modify the combination of Cupps and Miller can all of the claim elements of claims 7 and 16 be demonstrated. Examiner is not permitted to modify the combination of the cited references using Applicant's specification and, thus, Examiner's ground for rejection of claims 7 and 16 has been overcome.

Claims 8 and 17

Claims 8 and 17 further specify that the storage of the assigned order number that was received over the public-access network includes the printing of the assigned order number. Again, the cited references, alone or in combination, do not teach or suggest such storage for an assigned order number received over a public-access network for verification against a generated label identifying the assigned order number. Verification of an order number received over the public-access network at the customer station of Cupps against an order number on a label as shown in Miller is only provided by the disclosure of Applicant's specification. Examiner cannot use Applicant's specification in this manner, and, consequently, this ground of rejection for claims 8 and 17 must fall.

Claims 9 and 18

Claims 9 and 18 further specify that the storage of the assigned order number that was received over the public-access network includes the printing of

the assigned order number as a bar code. Again, the cited references, alone or in combination, do not teach or suggest such storage as a bar code for an assigned order number received over a public-access network for verification against a generated label identifying the assigned order number. Verification of an order number received over the public-access network at the customer station of Cupps and printed as a bar code against an order number on a label as shown in Miller is only provided by the disclosure of Applicant's specification. Specifically, the verification of claims 9 and 18 include confirmation that the bar code printout of the assigned order number received over the public-access network corresponds to the generated label identifying the assigned order number. This verification requires a comparison of a bar code and generated label. Examiner's cited combination only suggests the reading of a label and comparison with an order number stored internally unless Examiner modifies the cited combination with the teachings of Applicant's specification. Examiner cannot use Applicant's specification in this manner, and, consequently, this ground of rejection for claims 9 and 18 must fall.

Claims 14-15 and 23-24

Examiner's rejection of claims 14-15 and 23-24 is improper because Examiner equates the basket of these claims with the boxes in the Miller reference. These claims require that an alarm be sounded if a prepared order is removed from a basket. Miller only teaches an alarm if the box, i.e., the basket, is removed without authorization from a location. Neither Miller nor Cupps teaches or suggests a basket having a sensor in which a prepared order is

placed so removal of the prepared order is detected and an alarm generated. For such a limitation to be taught by Miller, the label on the box would need to generate an alarm in response to a pizza being removed from the box. No such teaching or suggestion is presented in the Miller reference. For at least this reason, claims 14-15 and 23-24 are patentable over all cited references, either alone or in combination.

Claims 10-11 and 19-20

The rejection of claims 10-11 and 19-20 must fall because Suzuki does not teach or suggest the use of a personal digital assistant (PDA) to issue an order message over a public-access network nor does it teach or suggest the use of a PDA for storing an assigned order number that was received over a public-access network. Suzuki does teach the use of a PDA in a transaction system; however, the PDA stores “personal demographic information, shopping history and store incentive program information” that is read and updated at a POS terminal in a store (Col. 8, lines 41-61). There is no teaching or suggestion that the PDA may be used to place an order that is identified by an assigned order number that the PDA receives over a public-access network and then stores. Only by converting the customer’s computer of Cupps into the PDA of Suzuki and then supplying functionality not taught by either reference is Examiner able to assert this combination renders the invention of these claims obvious. However, the use of a PDA to place an order and receive an assigned order number over a public-access network so the number may be stored in the PDA is only taught by Applicant’s specification. Neither Cupps nor Suzuki

recognizes the need for assigned order number verification so that a prepared order may be released at an automated check-out station. This deficiency cannot be supplied by the combination of the references. The rejection is based on the substitution of Suzuki's PDA for Cupp's customer computer and the addition of assigned order number verification at an automated check-out station. This addition is not available from any cited reference or combination of cited references but rather from Applicant's specification. Consequently, the ground of rejection noted for these claims is improper and the claims are allowable.

Furthermore, citation to the stated purpose of Suzuki in enabling a customer to record purchases on the PDA in a store and then check out at a POS terminal is inapposite because Suzuki fails to address the issue of verification at checkout. Only when the consumer presents the PDA at the checkout is the order prepared and released to the consumer without verification of an assigned order number. That is, Suzuki is completely silent regarding the problem addressed by the present invention, namely, verification of an order prepared in accordance with an order message received over a public-access network so that the prepared order may be released to a customer at an automated check-out station. Correlation of a customer to a prepared order is simply assumed in Suzuki and no use of the PDA to store for later retrieval and verification an assigned order number received over a public-access network is taught or suggested for such correlation. Thus, Suzuki does not complete the disclosure of the Cupps/Miller combination to render obvious the invention as set forth in claims 10-11 and 19-20.

Claims 12 and 21

These claims require a card reader being coupled to the computer that sends an order message over a public-access network for the purpose of reading a permanent identification number from a stored-value card so the number may be transmitted over the public-access network to the cafeteria web site for use as the assigned order number. Suzuki does not teach or suggest this function for the stored-value card read by the kiosk. Instead, Suzuki teaches the transmission of transaction data to the kiosk for storage on the ID card for later presentation at the POS terminal. Suzuki, therefore, is a reversal of Applicant's invention because Suzuki stores transaction data on the ID card for later retrieval at the POS terminal rather associating a permanent identification number received over a public-access network with an order prepared in accordance with an order message received over the public-access network. Thus, the POS terminal of Suzuki does not verify the assigned order number of a generated label against a permanent identification number stored on a stored-value card as required by claims 12 and 21. Suzuki cannot supplement the disclosure of the Cupps/Miller combination to render obvious the invention of claims 12 and 21 unless Suzuki is modified by Applicant's specification to include verification of an assigned order number on a generated label against a permanent identification number stored in a stored-value card. Such modification of a reference is impermissible and claims 12 and 21 are patentable over the references of record, either alone or in combination.

Claims 13 and 22

These claims require the deduction of an amount corresponding to a prepared order after the prepared order has been verified as having an assigned order number on its generated label that corresponds to the assigned order number stored in a stored-value card. As previously noted, Suzuki does not teach or suggest such verification and cannot, consequently, deduct any amount for such a verified order. Suzuki does not perform the type of verification required by these claims because Suzuki does not recognize the problem of correlating prepared orders having generated labels that bear an assigned order number with an assigned order number stored in a stored-value card. This problem is also not recognized by Miller or Cupps. Only by reading Applicant's specification into the combination of these references is Examiner able to construct a system that performs such verification and deduction. However, modification of the teachings of a reference with Applicant's specification is impermissible and does not render claims 13 and 22 obvious. For at least these reasons, claims 13 and 22 are patentable over the references of record, either alone or in combination.

Conclusion

The grounds of rejection submitted in the final Office Action of September 15, 2003 are founded upon a combination of references impermissibly modified by the teachings of Applicant's specification. Applicant's specification may not be used to overcome the deficiencies in a cited combination of references. None of the references of record teach or suggest the verification of an assigned order

number on a generated label associated with a prepared order against an assigned order number received by a computer over a public access network and stored in a storage unit at the computer. Furthermore, none of the references recognize the problem of correlating the prepared order having a generated label with a stored assigned order number that was received over a public-access network. Nor do any of the references envision a basket having a sensor for detecting removal of a prepared order bearing a generated label with an assigned order number. No reference has been cited that teaches the transmission of a permanent identification number over a public-access network for use as an assigned order number at a cafeteria web site. Efforts to include such teachings in the cited references require the use of Applicant's specification to modify the references. Such use is inappropriate.

For at least these reasons, all of the pending claims 7-24 are allowable over the references of record, either alone or in combination. Re-examination and allowance of all pending claims is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. Lockman".

David M. Lockman

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